

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT OFFICER
COUNTY OF RICHLAND)	
)	DECISION
In the Matter of Protests of:)	
)	CASE No. 2009-139
)	
Mid-Atlantic Drainage, Inc.)	
Gossett Concrete Pipe Co., Inc.)	
Southeastern Concrete Products)	
Americast)	
)	
)	
Materials Management Office)	POSTING DATE:
IFB No. 5400001026)	
Statewide Term Contract for)	
<u>Concrete Culvert Pipe</u>)	December 7, 2009

This matter is before the Chief Procurement Officer (CPO) pursuant to letters of protest from Mid-Atlantic Drainage, Gossett Concrete Pipe, Southeastern Concrete Products, and Americast (the protestants)¹. With this invitation for bids (IFB), the Materials Management Office (MMO) attempts to procure statewide term contracts for concrete culvert pipe. The solicitation requested bids for various sizes of concrete culvert pipe for seven districts of the state and anticipated award of a primary and secondary contract for each district. The protestants took exception with MMO's awards of districts 1 and 5 to Concrete Designs, LLC.

In order to resolve the matter, the CPO conducted a hearing November 23, 2009. Appearing before the CPO were Mid-Atlantic Drainage, represented by Frank Mood; Southeastern Concrete Products, represented by Charles Carson; Americast, represented by Ned McNeely; CDIPIPE, represented by James Kidd; SCDOT, represented by Amanda Taylor, Esquire; and MMO, represented by John Stevens, State of South Carolina (State) Procurement Officer.

NATURE OF PROTEST

¹ The CPO acknowledges another letter of "protest" from the Carolinas Concrete Pipe Products Association, but finds that the association was not an actual bidder for the solicitation and is therefore ineligible to protest the award under SC Code section 11-35-4210(1).

The letters of protest are attached and incorporated herein by reference.

FINDINGS OF FACT

The following dates are relevant to the protest:

1. Original Invitation for Bid (IFB) published to the internet July 29, 2009. [Ex. 1]
2. Solicitation email notification of original IFB to registered vendors on July 30, 2009. [Ex. 5]
3. Solicitation advertised in the South Carolina Business Opportunities (SCBO) dated August 3, 2009. [Ex. 7]
4. Amendment 1 published September 4, 2009. [Ex. 8]
5. Intent to Award published October 2, 2009. [Ex. 16]
6. Intent to Award suspended October 8, 2009. [Ex. 17]

WITHDRAWAL OF PROTEST ISSUE

During the hearing, Mr. Mood of Mid-Atlantic Drainage withdrew his protest issue No. 1 that alleged, "Mid-Atlantic Drainage, Inc. appears to be the lowest bidder in two Lots (Districts) based on the limited materials published in the Intent to Award Notice."

DISCUSSION

This procurement required that every producer of concrete culvert pipe be pre-qualified by SCDOT. The original IFB, as found on page 13, Part III, "Scope of Work/Specifications", addressed the specifications, in part, as follows:

BID SPECIFICATIONS AND INSTRUCTIONS FOR REINFORCED CONCRETE CULVERT PIPE (CONT.)

Bids for pipe must meet the South Carolina Department of Transportation's Standard Specification for Highway Construction Edition of 2007; Section 714. Section 714 refers to SC-M-714 Supplemental Technical Specification for Permanent Pipe Culverts. These specifications are located on the SCDOT Internet, Doing Business with SCDOT, Supplemental Technical Specifications: http://www.scdot.org/doing/sup_tech_specs.shtml

The SC-M-714 Supplemental Technical Specification for Permanent Pipe Culverts are subject to frequent changes and the contractor must meet the SC-M-714 requirements that are in place at the time of contract award. After award, the Contractor is responsible for checking the SCDOT Internet to ensure that pipe meets the most current requirements of SC-M-714 that are in effect at the time of delivery.

The protestants, all of whom were prequalified as producers of concrete culvert pipe by SCDOT, alleged that:

1. although they were pre-qualified, MMO never notified them of the solicitation;
2. CDIPIPE is not a pre-qualified bidder of the South Carolina Department of Transportation (SCDOT);
3. CDIPIPE did not follow the proper procedure of using the required multiplier when filling out the bid quantities and prices;
4. MMO did not follow its stated bid procedure of awarding both a primary and secondary contract for the districts in question;
5. MMO did not exercise due diligence to confirm that CDIPIPE was a responsive and responsible bidder prior to issuance of the intent to award; and,
6. Mr. Brinkley assured them that the solicitation would be rebid, but then issued an intent to award to CDIPIPE.

CONCLUSIONS OF LAW

Allegation #1 - Although the protestants were pre-qualified by SCDOT as producers of concrete culvert pipe, MMO never notified them of the solicitation.

This solicitation required that *manufacturers* be pre-qualified by SCDOT to produce concrete culvert pipe. [Ex. 1, p. 13] It did not require *bidders* to be pre-qualified producers of pipe in order to bid, but rather that all pipe delivered under the contract be produced by a pre-qualified manufacturer. Therefore, any supplier could bid as long as the source of the pipe was from a pre-qualified manufacturer.

MMO published the solicitation in *South Carolina Business Opportunities* (SCBO), as required by SC Code Ann. § 11-35-1520(3). [Ex. 7] Additionally, MMO provided further notice of the solicitation both by posting it on MMO's website and by posting it in the state's new web-based automated procurement system, called SCEIS. At least one of the protestants, Southeastern Concrete Products, received an email notice of the solicitation as a result of its registration in SCEIS. Despite these efforts, MMO received no bids for districts 2, 3, 4, or 6, one bid for district 7, and two bids for districts 1 and 5. These bidding results were certainly less than desirable.

Regarding notice of bidding opportunities, the Consolidated Procurement Code (Code) requires, "Adequate notice of the invitation for bids must be given at a reasonable time before the date set forth in it for the opening of bids. The notice must include publications in "South Carolina Business Opportunities" or a means of central electronic advertising as approved by the designated board office." [11-35-1520(3)]

Allegation # 2 - CDIPIPE is not a pre-qualified bidder of the South Carolina Department of Transportation (SCDOT).

The IFB required "Bids for pipe must meet the South Carolina Department of Transportation's Standard Specification for Highway Construction Edition of 2007; Section 714. Section 714 refers to SC-M-714 Supplemental Technical Specification for Permanent Pipe Culverts." [Ex. 1, p. 13, Bid Specifications and Instructions for Reinforced Concrete Pipe.] Nothing in the solicitation limited bidding to pre-qualified producers; just that delivery be made of pipe produced by pre-qualified manufacturers. Nothing in CDIPIPE's bid indicated that CDIPIPE declined to comply with this requirement.²

Allegation # 3 - CDIPIPE did not follow the proper procedure of using the required multiplier when filling out the bid quantities and prices.

The IFB required bidders to bid according to a particular formula that required:

Bid prices to be net price per foot length per foot depth, which will represent price of 18" pipe, a factor of 1, for which bidders will furnish the several sizes of the pipe, meeting the required specifications, delivered to any destination in the representative counties, named in the bid schedule, by highway transport trucks to the job sites as directed...

The price per foot length for joints shall then be computed in accordance with the following set of multiples multiplied by the net price per foot length/per foot depth for the given county or bidder's loading point unit prices as applicable:

12" – 0.75
15" – 0.85
18" – 1.00
24" – 1.55
30" – 2.40
36" – 3.25
42" – 5.25
48" – 6.55

Pipe is to be purchased in 8-foot lengths for all sizes for all counties.
[Ex. 1, p. 13]³

Therefore, the IFB required bidders to base all prices for various width pipe on their price for 18" pipe times the appropriate factor above for the size pipe specified.⁴

Regarding past buying practices, the bidding schedule provided bidders a list of the various sizes of pipe needed for districts around the state. The two districts under protest are districts 1 and 5.

CDIPIPE's bid did not comply with the specified bidding formula; therefore, it was nonresponsive to the bidding instructions. For both districts 1 and 5, CDIPIPE bid a price for its 18" pipe as \$9.251.⁵ Therefore, CDIPIPE bid prices for all other diameters of pipe had to be based on the

² While not relevant to the protest issues, CDIPIPE was pre-qualified by DOT as a producer of pipe prior to the hearing.

³ The solicitation was amended to add the following at the end of this sentence: "'The minimum class for 18" RCP for SCDOT purchase is to be Class IV.'" (THIS IS ONLY FOR 18' RCP.)"

⁴ It is not clear whether bidders were to submit a price for a single foot of pipe or for an 8 foot length of pipe, which seems to be demanded by the bidding instructions, but not the bidding schedule.

⁵ Apparently, CDIPIPE's bid was based on a price per foot, rather than a price for a single 8 foot length.

multipliers noted above, i.e., \$9.251 times the appropriate factor for the respective pipe sizes. The below chart illustrates.

Pipe Diameter	IFB's Factor for Each Size Diameter Pipe	Extended Price, as Required by the Formula (\$9.251 x the factor indicated in column 2)	CDIPIPE'S Bid Unit Price for District 1	CDIPIPE'S Bid Unit Price for District 5
12" Diameter	0.75	\$6.938	\$8.202	\$8.204
15" Diameter	0.85	\$7.863	\$8.804	\$8.401
18" Diameter	1.00	\$9.251	\$9.251	\$9.251
24" Diameter	1.55	\$14.339	\$12.492	\$11.901
30" Diameter	2.40	\$22.202	\$17.641	\$16.803
36" Diameter	3.25	\$30.066	\$30.763	\$29.302
42" Diameter	5.25	\$48.568	\$53.592	\$51.041
48" Diameter	6.55	\$60.594	\$57.544	\$54.802

As this chart demonstrates, CDIPIPE ignored the requirements of the IFB and, instead bid prices not in compliance with the IFB. Mr. Kidd of CDIPIPE admitted as much during the hearing. He stated that he did not bid his pipe prices according to the required formula. In some cases, the CDIPIPE prices would be more advantageous to the State, but in other cases, the CDIPIPE prices would be a disadvantage to the State. For purposes of this decision, the advantage or disadvantage to the State⁶ isn't the primary determining factor – compliance with the bidding instructions is. CDIPIPE did not comply with the bidding instructions. Consequently, CDIPIPE was nonresponsive to the IFB.

⁶ The net advantage or disadvantage to the State is unknown at this time. It would be determined during the life of the contract according to the ordering patterns of state agencies and local governments that order from the contract.

Allegation # 4 - MMO did not follow its stated bid procedure of awarding both a primary and secondary contract for the districts in question.

The IFB reads, “Award(s) will be made to a Primary Contractor and a Secondary Contractor for each of the 7 Districts.” [Ex. 1, p. 17, Award by Lot] MMO did not issue secondary awards for districts 1 or 5, which were the only districts awarded. During testimony, Mr. Brinkley stated that he overlooked the requirement; that is was an oversight.

Allegation # 5 - MMO did not exercise due diligence in to confirm that CDIPIPE was a responsive⁷ and responsible bidder prior to issuance of the intent to award.

Southeastern Concrete Products alleged that Mr. Brinkley did not exercise due diligence in determining CDIPIPE a responsible bidder. During testimony, Mr. Brinkley offered no enlightenment regarding his efforts to determine if CDIPIPE was responsible or not, but stated only that he “had a sixth sense about these things.”

Regarding award of an IFB, the Code requires “notice of an award or an intended award of a contract to the lowest responsive and responsible bidders whose bid meets the requirements set forth in the invitation for bids must be given by posting the notice at a location specified in the invitation for bids.” [11-35-1520(10)] Prior to every award of an IFB, the Code requires that the procurement officer determine that the awarded bidder is responsible. The Code defines a responsible bidder as “a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance which may be substantiated by past performance.” [11-35-1410(6)] Regarding the State’s determination of a bidder’s responsibility, the Code provides, “The determinations required by the following sections and related regulations are final and conclusive, unless clearly erroneous, arbitrary, capricious, or contrary to law: Section 11-35-1810(2) (Responsibility of Bidders and Offerors, Determination of Nonresponsibility).” [11-35-2410(1)]

With the exception of CDIPIPE not being pre-qualified as a producer of pipe at the time of the bid opening, Southeastern did not present evidence to prove that CDIPIPE was not a responsible bidder. However, Mr. Brinkley's testified certainly raised legitimate questions regarding his due diligence in his determination that CDIPIPE was a responsible bidder.

Allegation # 6 - Mr. Brinkley assured them that the solicitation would be rebid, but then issued an intent to award to CDIPIPE.

Southeastern Concrete Products and Gossett Concrete Pipe alleged that Mr. Brinkley assured them that the requirement would be rebid, but rather proceeded to award to CDIPIPE. First, bidders are not entitled to rely on such statements.⁸ The solicitation expressly provides bidders should only rely on information provided in writing: "Oral explanations or instructions will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an Amendment to the solicitation, if that information is necessary for submitting offers or if the lack of it would be prejudicial to other prospective offerors." [Ex. 1, p.7, Questions from Offerors] In addition, offerors are on notice of the law, and Regulation 19-445.2065 provides that such action can only be taken by a written determination.⁹ No such determination was prepared.

Given the basis for this decision, the CPO need not decide whether such comments were actually made. However, the CPO takes this opportunity to remind procurement officials to exercise great care in providing important information verbally. Such actions have contributed to expensive litigation in the past and should be avoided. Moreover, such actions undermine the trust of the

⁷ To the extent that this allegation also challenges responsiveness, this issue here is dismissed as vague. Pursuant to S.C. Code Ann. §11-35-4210(2) (b), a protest "must set forth both the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided."

⁸ See, generally, Regulation 19-445.2042(B) ("Nothing stated at the pre bid conference shall change the Invitation for Bids unless a change is made by written amendment."); Companion Property & Casualty Insurance Company v. South Carolina Procurement Review Panel, 2003-UP-174 (S.C. Ct. App. March 4, 2003) (Panel Case No. 2000-1CA (II)) (reversing panel order binding state to honor oral statements made by state procurement officer).

business community, which is essential. Regarding oral comments regarding cancelation of a solicitation, procurement officials are reminded that bids are firm offers. A decision to cancel a solicitation and release bidders from those offers is information that should be provided, in writing, to all bidders at the same time.

DETERMINATION

The CPO notes a number of flaws in the solicitation and bidding process making the solicitation process suspect. Primarily, the CPO finds that CDIPIPE did not bid prices for different diameter pipe as required by the IFB's bidding instructions. Specifically, CDIPIPE did not base its bid prices for different diameter pipe on its bid price for 18" rendering the bid nonresponsive to the requirements of the IFB. Consequently, the bid of CDIPIPE must be rejected. The protests that CDIPIPE was nonresponsive to the bidding requirements are granted. Full determinations on the merits of the other protest allegations are not required.

Regarding remedy, the CPO directs that the solicitation be rebid. The CPO finds certain inconsistencies in the solicitation requirements and MMO's processing of the procurement troubling including:

1. The code requires adequate notice of solicitations. Whether or not that standard was met, Mr. Brinkley should have notified the pre-qualified bidders directly. While MMO notified bidders of the solicitation through advertisement in SCBO and posting on the MMO website, notice should have included direct communication to the pre-qualified producers. Most troubling is Mr. Brinkley's statement during the hearing that he overlooked the pre-qualification requirement of the IFB.
2. The solicitation failed to advise potential bidders of the procedures for the inclusion of a product on the qualified products list ("QPL"). Regulation 19-445.2140(A)(3) defines the phrase

⁹ Notice of this law is also provided in the solicitation by the clause entitled Rejection/Cancellation (Jan 2004). MMO's longstanding practice is to post a statement of no award, thereby giving bidders official written notice of such action.

“Qualified Products List” as “an approved list of supplies, services, information technology, or construction items described by model or catalogue number, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.” This solicitation involved a Qualified Products List. Regarding QPLs, regulation 19-445.2130(A), Prequalifications for Supplies and Suppliers, Qualified Products Lists, states in relevant part, “The procedures for the inclusion of a product on the qualified products list (“QPL”) must be available to prospective vendors for consideration of their product to the list.” No such procedures for inclusion of another product were included in the solicitation.¹⁰

3. The State failed to give adequate notice of the QPL process. The pre-qualification process can be found on the SCDOT website after some diligent searching at <http://www.scdot.org/doing/ConstructionDocs/pdfs/Materials/69%20QPP%20041609.pdf> but that information was not included in the IFB.

As noted above, this solicitation involved a Qualified Products List. Regulation 19-445.2140(A)(3) defines the phrase “Qualified Products List” as “an approved list of supplies, services, information technology, or construction items described by model or catalogue number, which, prior to competitive solicitation, the State has determined will meet the applicable specification requirements.” (emphasis added) It is fundamental that all competitive processes must be done after adequate public notice, including the process of pre-qualifying products “prior to competitive solicitation.” For example, when bidders are to be prequalified for a single solicitation, the Code requires that notice of the opportunity be advertised in SCBO. Section 11-35-1520(11)(a) (“Adequate public notice of the request for qualifications must be given in the manner provided in Section 11 35 1520(3).”). When a bidder is not prequalified, Regulation 19-445.2132(A), Prequalification for a Single Solicitation,

¹⁰ The solicitation did provide the URL (www.scdot.org/doing/sup_tech_specs.shtml) for DOT’s specification. Those specifications reference SCDOT Qualified Products List 69, but they do not include either instructions for how to request

requires that, “Prior to issuance of the solicitation, each potential offeror seeking qualification must be promptly informed as to whether qualification is attained and, in the event qualification is not attained, is promptly furnished specific information why qualification was not attained.”

To conclude that less notice is required for a QPL, which governs multiple solicitations, than is required for a single solicitation is not logical.

Section 11-35-1520(3) requires that the notice be given at a reasonable time and must be included in SCBO, which is the Code’s only approved means of notice. There was no advertisement in SCBO regarding prequalification. Therefore, there was not adequate notice of the prequalification.¹¹

4. No listings of prequalified manufacturers of pipe were included or referenced by web-link in the solicitation. The IFB allowed suppliers to bid pipe produced by pre-qualified manufacturers, but the solicitation did not provide suppliers that information.

5. The IFB contained conflicting directions for bidders regarding how they were to bid price. The bidding formula required that all bid prices for pipe be offered according to a prescribed formula based a pipe for 18” diameter pipe, but the bid schedule implies otherwise. The bid schedule itemized each district’s estimated procurements in the form of usage requirements for each size pipe according to Attachment A, Best Projected Pipe Usage (sic) for Year 2008. Attachment A provided bidders estimates of each district’s usage of each size pipe in “8’ joints”, as pipe is normally delivered. Those estimated quantities were transferred to the bidding schedule for each size pipe for each district causing

this document or a web link showing where to find it.

¹¹ As an aside, the CPO contacted SCDOT after the hearing regarding its process for giving notice to prospective pipe manufacturers of the QPL process. (Notice of the QPL process was not a protest issue.) According to Mike Burk, SCDOT’s Director of Procurement, SCDOT conducted aggressive attempts to enlarge the SCDOT list of pre-qualified bidders of concrete culvert pipe. According to Mr. Burk, the engineering department sent USPS notification of the QPL and related policies to all known suppliers and producers of reinforced concrete pipe. This has occurred at least twice a year for the past two years. The president of a pipe producers association was on the committee that worked on this. At the time, notification was sent to all known producers regardless of membership in the association. This process was advertised through the Carolinas Concrete Pipe and Products Association (CCPPA). SCDOT did not advertise the pre-qualification process in South Carolina Business Opportunities. Mr. Burk committed to the CPO that, in the future, SCDOT will

confusion among the bidders. According to testimony and MMO's Cost Analysis, "Concrete Designs, LLC prices were submitted as per one foot totals for a one foot section of 8' pipes" and Mid-Atlantic Drainage prices were submitted as the total for the entire 8' section." [Ex. 13, footnotes 1) and 2)]

In addition, the inclusion of a bid line item on the bid schedule (without clarifying instructions) for every size of pipe suggested that the bidder could decide pricing for each item independently. As noted above, the solicitation effectively mandated the price of every line item once the bidder determined his price for the 18" diameter pipe.

On re-solicitation, the solicitation must be edited to provide harmony between the bidding instructions and the bidding schedule.

6. Mr. Brinkley's determination of CDIPIPE's responsibility and any other bidder's responsibility must be conducted with due diligence based upon actual facts gained from CDIPIPE and other relevant sources. It cannot be based upon intuition alone.

7. A document entitled "Authorized Producers of Reinforced Concrete Pipe (RCP)" [Exhibit 4] was introduced at the hearing. This document shows 10 authorized producers. Despite the ample number of available producers, MMO received no bids for districts 2, 3, 4, or 6, one bid for district 7, and only two bids for districts 1 and 5. Obviously, districts 2, 3, 4, and 6 must be rebid. Competition for the remaining districts was anything but robust.

Given these concerns with the procurement, and under the authority of Section 11-35-4310, the CPO cancels the proposed award and orders that the solicitation be revised, consistent with this decision, to comply with the law and rebid.

advertise such QPLs in SCBO. Those advertisements will provide links to the lists and policies. Such ads will be run twice a year – January and July.

Voight Shealy

R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

December 7, 2009

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2008 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 310, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

October 12, 2009

Mid-Atlantic Drainage, Inc.
1124 White Oak Lane
Galivants Ferry, SC 29544

Mr. Richard Brinkley
Procurement Officer
State of South Carolina
Material Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Mr. Brinkley,

With this letter, Mid-Atlantic Drainage, Inc. formally protests the Intent to Award Concrete Designs, Inc. the SW Term Contract Concrete Culvert Pipe posted October 8, 2009. As the basis for this determination has not been evidenced by written decision, we request MMO provide material relevant to the decision and reserve the right to expand the basis of our protest after review of that material. Mid-Atlantic Drainage, Inc. protests the actions and decisions of the MMO as follow:

1. Mid-Atlantic Drainage, Inc. appears to be the lowest bidder in two Lots (Districts) based on the limited material published in the Intent to Award Notice.
1. Concrete Designs, Inc., while a manufacturer of Reinforced Concrete Pipe, is not on the published Qualified Products List # 69 of the South Carolina Department of Transportation.
3. Concrete Designs, Inc. did not follow the proper procedure of using the required multiplier when filling out the bid quantities and prices, therefore disqualifying them from the bid process.

Given the short period of time allowed for filing of protests, and the fact that we have not yet been allowed to review documents relevant to this protest, we are reserving the right to identify and file additional protests at a further date.

Sincerely,



Frank Mood
Mid-Atlantic Drainage, Inc.

RCVD MMO

OCT12 '09 MO 3:21PM



GOSSETT CONCRETE PIPE CO., INC.

P.O. BOX 3683
GREENVILLE, SC 29608-3683

Since 1944

(864) 244-0370

OCT 13 '09 TU 10:34AM

REC'D BID CONTROL

October 7, 2009

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Via Fax: 803- 737-0639

Re: Protest of Intent to Award Solicitation: 5400001026 – S W Term Contract Concrete Culvert Pipe
(Final.doc, Amendment 1.doc, Intent to Award.doc, Emailed Notice: 9/30/09 & Correspondence)

Dear Chief Procurement Officer:

This letter is to serve as our official protest of your office's Intent to Award the above referenced contract for Districts 1 & 5 to Concrete Designs, Inc. of Myrtle Beach, SC; after having several conversations with Mr. Brinkley of your Office and not getting a rational decision. Therefore, I will attempt to present our case by making several points that we consider to be factual and relevant:

- 1) On page 13 of the Final.doc, under **"BID SPECIFICATIONS AND INSTRUCTIONS FOR REINFORCED CONCRETE CULVERT PIPE (CONT.)"**, it states **"Bids for pipe must meet the South Carolina Department of Transportation's Standard Specification for Highway Construction Edition of 2007; Section 714. Section 714 Supplemental Technical Specification for Permanent Pipe Culverts."**

Concrete Designs, Inc. is not an authorized SCDOT RCP producer and is not listed on SCDOT's Quality Product List 69 (QPL 69), which is a requirement to meet SCDOT RCP specifications.

(Please note that there are 9 Authorized Producers of RCP on SCDOT's QPL 69.)

I would also like to point out that the nine (9) approved producers have all incurred great expense to adhere to your new ruling of producers being self-certified-Q-Cast certification producers in order to be SCDOT approved and on the QPL-69. To accept any bid from anyone that has not ~~met~~ these standards would be a reversal of preset qualifications.

- 2) We don't believe that proper bid notification was given to the authorized SCDOT RCP producers on the SCDOT OPL 69. We would have bid and we have been told that some other producers would have bid, if the mailed notification of the past had been given. Why was that notification process changed? Is it not in the best interest of the State of SC and SC taxpayers to get as many bids on RCP as possible?
- 3) This note on the top of page 14 of the final.doc. and is apparently not being adhered to:
"Note: Award(s) will be made to a Primary Contractor and a Secondary Contractor for each of the 7 district lots."
- 4) On page 14, the listed set of numerical multiples intended to be used to compute the price per foot length of pipe are not being adhered to. What is the reason to include and list the multiples, when they are not being used?
- 5) Finally, Mr. Brinkley assured me that the contract would be rebid, due to the lack of bidders, and that we would be properly notified when a date was chosen.

In summary, there are so many discrepancies and misrepresentations in this contract, which resulted in your published Intent to Award Districts 1 & 5, that we feel compelled to formally protest the pending award. For relief, we formally request a new and corrected solicitation that is properly advertised to the authorized producers on the SCDOT QPL 69, in order to insure fairness to all parties involved; the State of SC, SCDOT, SCDOT Authorized Producers of RCP, and the taxpayers and citizens of SC.

Sincerely,

A handwritten signature in black ink, appearing to read "A.C. Gossett, III", with a stylized flourish at the end.

A. C. Gossett, III
President

Gossett Concrete Pipe Co., Inc.



October 9, 2009

1 of 2

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Via Fax: 803-737-0639

Re: Protest of Solicitation: 5400001026 – S W Term Contract Concrete Culvert Pipe
(Final.doc, Amendment 1.doc, Intent to Award.doc, Emailed Notice: 9/30/09 & Correspondence)

Dear Chief Procurement Officer:

This letter is to serve as our official protest of your office's Intent to Award the above referenced contract for Districts (Lots) 1 & 5 to Concrete Designs, Inc. of Myrtle Beach, SC. After having several conversations and email exchanges with Mr. Brinkley and Mr. Register, of your Office, and not getting substantial satisfaction; we present several points that we consider to be factual and relevant for your consideration:

1) On the bottom of page 13 of the Final.doc, under the heading **"BID SPECIFICATIONS AND INSTRUCTIONS FOR REINFORCED CONCRETE CULVERT PIPE (CONT.)"**, the first sentence states **"Bids for pipe must meet the South Carolina Department of Transportation's Standard Specification for Highway Construction Edition of 2007; Section 714. Section 714 Supplemental Technical Specification for Permanent Pipe Culverts."** As pointed out to Mr. Register in an October 6, 2009 email; Concrete Designs, Inc. is not an authorized SCDOT RCP producer and is not listed on SCDOT's Quality Product List 69 (QPL 69), which is a requirement to meet SCDOT RCP specifications. (Please note that there are 9 Authorized Producers of RCP on SCDOT's QPL 69.)

2) We don't believe that proper bid notification was given to the authorized SCDOT RCP producers on the SCDOT QPL 69. We would have bid and we have been told that some other producers would have bid, if the mailed notification of the past had been given, or better notification in some other way. It is not in the best interest of the State of SC and SC taxpayers to get as many bids on RCP as possible? Emailed notices can be easily overlooked or not seen, especially if they end up in a spam folder or are blocked by spam security software, which many companies have now.



2 of 2

3) This note on the top of page 14 of the final.doc. is apparently not being adhered to: **"Note: Award(s) will be made to a Primary Contractor and a Secondary Contractor for each of the 7 district lots."** If there were at least two bidders, as I am told there were, isn't it required that a Primary and Secondary Contractor be listed on the Intent to Award?

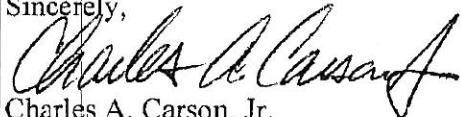
4) On page 14, the list of numerical multiples that are intended to be used to compute the price per foot length of pipe are not being adhered to. What is the reason to include and list the multiples, when they are not being used? In the past, those multiples have been multiplied times the submitted 18" unit price, to determine the other pipe size unit prices.

5) And in Mr. Register's email, dated October 6, he states: "Mr. Brinkley is required by state law and the associated regulation to award to the lowest responsive and responsible offeror that has available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them." We would like evidence of the due diligence that Mr. Brinkley performed to confirm that Concrete Designs, Inc. is in fact in compliance with those requirements, since it is state law.

6) Finally, Mr. Brinkley assured me on the 30th that the contract would be rebid, due to the lack of bidders, and that we would be properly notified when a date was chosen. Then on the 6th, Mr. Register told me that Districts 1 & 5 was being awarded to Concrete Designs, Inc.?

In summary, since there was a poor bid notification process resulting in the lack of participating qualified producers and many no bid items, many discrepancies in the contract documents, and some non-compliance to what was written in the documents, we feel compelled to formally protest the posted Intent to Award. And for relief, we formally request a new and corrected solicitation that is properly advertised to the authorized producers on the SCDOT QPL 69 and the wording be adhered to, in order to insure that justice and fairness is served to all the parties involved which includes the State of SC, SCDOT, SCDOT Authorized Producers of RCP, and the taxpayers and citizens of SC.

Sincerely,



Charles A. Carson, Jr.
President & Treasurer

Attachments: SCDOT QPL 69, emails

October 7, 2009

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201
Via Fax: 803-737-0639

Re: Protest of Intent to Award Solicitation 5-460001026 – S.W. Term Contract Concrete Culvert Pipe
(Final.doc, Amendment 1.doc, Intent to Award.doc, Emailed Notice: 9/30/09 & Correspondence)

Dear Chief Procurement Office:

This letter is to serve as our official protest of your office's Intent to Award the above referenced contract for Districts 1 & 5 to Concrete Designs, Inc. of Myrtle Beach, SC; after having several conversations and exchanging emails with Mr. Brinkley and Mr. Register of your office and not getting a rational decision. Therefore, I will attempt to present our case by making several points that we consider to be factual and relevant:

- 1) On page 13 of the Final.doc, under "BID SPECIFICATIONS AND INSTRUCTIONS FOR REINFORCED CONCRETE CULVERT PIPE (cont.)", it states "Bids for pipe must meet the South Carolina Department of Transportation's Standard Specification for Highway Construction Edition of 2007; Section 714, Section 714 Supplemental Technical Specification for Permanent Pipe Culverts." Concrete Designs, Inc. is not an authorized SCDOT RCP producer and is not listed on SCDOT's Quality Product List 69 (QPL 69), which is a requirement to meet SCDOT RCP specifications. (Please note that there are 9 Authorized Producers of RCP on SCDOT's OPL 69.)
- 2) We don't believe that proper bid notification was given to the authorized SCDOT RCP producers on the SCDOT QPL 69. We would have bid and we have been told that some other producers would have bid, if the mailed notification of the past had been given. Why was the notification process changed? It is not in the best interest of the State of SC and SC taxpayers to get as many bids on RCP as possible?
- 3) This note on the top of page 14 of the final.doc and is apparently not being adhered to:
"Note: Award(s) will be made to a Primary Contractor and a Secondary Contractor for each of the 7 district lots."

In summary, there are so many discrepancies and misrepresentations in this contract, which resulted in your published Intent to Award Districts 1 & 5, that we feel compelled to formally protest the pending award. For relief, we formally request a new and corrected solicitation that is properly advertised to the authorized producers on the SCDOT QPL 69, in order to insure fairness to all parties involved; the State of SC, SCDOT, SCDOT Authorized Producers of RCP, and the taxpayers and citizens of SC.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. J. Tishack, Jr.", written in a cursive style.

William J. Tishack, Jr.
President



Carolinas Concrete Pipe and Products Association

P.O. Box 1673 • New Bern, NC • 28563
Ph: (252) 636-1445 Fax: (252) 633-3565
finlayson@ccppa.org

October 8, 2009

Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, South Carolina 29201

Re: Protest of Intent to Award Solicitation: 5400001026 – S W Term Contract Concrete Culvert Pipe

Dear Sir:


On behalf of the member companies of the Carolinas Concrete Pipe and Products Association (CCPPA), this letter is to formally protest your decision of 10/2/09 to award a contract to provide concrete culvert pipe for Highway Divisions 1 and 5. Our Association finds the process by which the prospective bidding companies were notified to be insufficient. Many qualified companies doing business in South Carolina were not aware of the new process. This resulted in an inadequate number of competitive bids and bids of unacceptable quality. Furthermore, as a further result of the insufficient bidding process, a contract was awarded to a company not certified to South Carolina Department of Transportation (SCDOT) standards to provide concrete culvert pipe. This is clearly an error.

Concerning the notification process, CCPPA strongly believes it is in the best interest of the citizens of South Carolina to advertise these bids as broadly and clearly as possible. The more bids available for the state to review, the more likely there will be a highly qualified and highly cost effective bid to consider. New notification processes are fine, provided there is sufficient transition for bidding companies to become accustomed to the new method. This may mean continuing to inform companies by traditional mail along with electronic means for a reasonable period of time, in order to receive proper bids. The taxpayers of South Carolina deserve to receive value for their dollars spent.

Concerning the certification, CCPPA insists that companies awarded bids to provide concrete culvert pipe be able to demonstrate that they are certified by SCDOT. Reinforced concrete pipe is a product of great strength and durability, but it must be manufactured to the highest standards. SCDOT certification gives South Carolina drivers the confidence to know that concrete culvert pipes beneath their roads are safe and will last a lifetime. Without that certification, drivers aren't being protected by the state.

The Carolinas Concrete Pipe and Products Association urges you to reopen the bidding process, appropriately notifying certified producers of concrete culvert pipe in South Carolina. We will be happy to assist you in contacting any of our member companies and encouraging those who qualify to submit bids. We are confident that South Carolina will receive many cost-competitive and well qualified bids as a result of this action.

Sincerely,



Marc Finlayson
Executive Director